

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Application by Verizon New England	)	
Inc., Bell Atlantic Communications,	)	
Inc. (d/b/a Verizon Long Distance),	)	CC Docket No. 02- 68
NYNEX Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions),	)	
Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in Maine	)	
	)	

**COMMENTS OF AT&T CORP.**

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## FCC ORDERS CITED

SHORT CITE	FULL CITE
<i>Connecticut 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New York, Inc. et al., for Authorization to Provide In-Region InterLATA Services in Connecticut</i> , CC Dkt. No. 01-100 (rel. July 20, 2001)
<i>KS/OK 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application of SBC Communications, Inc., et al, for Provision of In-Region InterLATA Services in Kansas and Oklahoma</i> , 16 FCC Rcd. 6237 (2001)
<i>Local Competition Order</i>	First Report and Order, <i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , 11 FCC Rcd. 15499 (1996), <i>aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC</i> , 120 F.3d 753 (8th Cir. 1997), <i>aff'd in part and rev'd in part by AT&amp;T Corp. v. Iowa Utils. Bd.</i> , 119 S. Ct. 721 (1999)
<i>Massachusetts 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in Massachusetts</i> , 16 FCC Rcd. 8988 (2001)
<i>Pennsylvania 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon Pennsylvania Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania</i> , CC Docket No. 01-138 (rel. Sept. 19, 2001)

**APPENDIX TO COMMENTS OF AT&T CORP. IN OPPOSITION TO VERIZON's  
SECTION 271 APPLICATION FOR MAINE**

**CC Docket No. 02-68**

<b>EX.</b>	<b>DECLARANT</b>	<b>SUBJECT(S) COVERED</b>
A	Pitts	Switching
B	Lieberman	DUF

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	)	

**COMMENTS OF AT&T CORP.**

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these comments in opposition to Verizon's application for authorization to provide in-region, interLATA services in Maine.

**INTRODUCTION AND SUMMARY**

A tiny band of residential customers with 257 lines served by facilities-based carriers (and 8873 facilities based business lines) are the foundation for Verizon's claim that its Maine local markets "are open" and that it satisfies the requirements of Section 271. Verizon Br. at 1, 5; Torre Dec., Att. 1, at 3. Even Verizon appears embarrassed by these numbers, noting that some "may try to argue that the number of facilities-based lines in Maine is not enough for Track A purposes." Verizon responds that "Track A requirements are satisfied so long as the number of competing lines is not *de minimis*." *Id.* at 7. If 257 facilities-based residential lines in

a state of 690,000 lines is not *de minimis*, it is difficult to conceive what would be. But regardless of whether 257 lines can satisfy Track A, it is certainly not enough to demonstrate that Maine local markets are irreversibly open to competition or that it would serve the public interest to grant this application.

Verizon complains that “Maine is a small state,” but the requirements of the Act apply with equal force to large and small states, and even to the “third most rural state in the entire country.” *Id.* at 4. Thus, Verizon’s comparisons of the anemic Maine competitive presence with the situations in larger states, *id.* at 8, merely emphasize the problems with this application. Clearly, Maine’s local exchange markets are not open to competition, and no statistical gymnastics by Verizon will change that fact.

Six years after the passage of the Act, local competition in Maine has not developed. The Maine Commission did not establish UNE rates until the eve of Verizon’s Section 271 application. Also, Verizon has resisted the development of local exchange competition at every turn, and Verizon’s failure to develop workable OSS systems or to offer cost-based rates has kept CLECs from entering the local market on anything other than a single order-by-order basis. The local exchange competition envisioned by the Act’s drafters could not develop in such a hostile environment.

In recent months, some of the former barriers to competition have been reduced. For example, the Maine Commission’s February 12, 2002 order establishing UNE rates<sup>1</sup> has addressed some of the most egregious TELRIC violations in Verizon’s UNE rates. In addition,

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<sup>1</sup> Investigation of Total Element Long-Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements, Docket No. 97-505 (Maine PUC) (Feb. 12, 2002) (“Feb. 12 Order”).

after several years of work, some of the failings in Verizon's OSS systems have now been addressed.

But significant problems remain. In particular, the Maine Commission's February 12 Order includes rate elements that violate TELRIC and will prevent development of a competitive local exchange market unless addressed. As discussed in more detail below, the switching rates include inflated minute-of-use charges that deter CLECs from serving high-use customers and daily usage feed ("DUF") rates that add almost a dollar a month to CLEC costs above cost-based levels. These pricing issues, although more discrete than the broader pricing issues raised in prior Section 271 proceedings, prevent the development of competitive local exchange markets because they raise CLEC costs, particularly in the low-margin residential market. These pricing issues must be addressed if CLECs are to enter local exchange markets and compete with Verizon for local exchange customers.

The balance of these comments is organized as follows. Part I addresses the Section 271 requirement that Verizon have the legal obligation to provide each and every UNE to competitors. In this case, Verizon cannot make that showing because it has neither an approved wholesale tariff nor a Statement of Generally Available Terms, and the Maine Commission has never issued an order requiring Verizon to provide UNEs or combinations thereof. Thus, even though Maine has issued its February 12 Order establishing UNE rates, Verizon is under no obligation to offer all UNEs, including UNE-P and UNE loop-transport combinations, to competitors in all situations. Thus, Verizon fails to satisfy this basic Section 271 requirement.

Part II addresses two TELRIC violations relating to the switching and DUF rates that raise CLECs' costs and undercut their ability to compete with Verizon in Maine. The switching rates violate TELRIC cost causation requirements and misallocate the fixed "getting started" switching costs to the minute-of-use rate. The resulting inflated minute-of-use rate inappropriately raises the costs for CLECs offering UNE-P service to high-use customers compared to Verizon's costs and allows Verizon to over-recover its costs. With respect to DUF, those rates should reflect Verizon's admission that DUF records are generated (and DUF cost is incurred) on a region-wide basis in a region that is dominated by New York. Verizon's Maine DUF rates are *four times* higher than the DUF rates approved by the New York Public Service Commission in January 2002. Moreover, Verizon has conceded that DUF costs have been declining over the past several years, but still charges the inflated DUF rate based on outdated 1996 data.

Part III addresses the public interest test. Under any reasonable analysis of that test, Verizon's application should be denied because the insignificant level of competitive entry and Verizon's resistance to opening the local exchange market demonstrate that the market is not irreversibly open to competition.

For the foregoing reasons, Verizon's application should be denied.

**I. VERIZON'S APPLICATION FAILS TO MEET THE SECTION 271 REQUIREMENT THAT VERIZON BE BOUND BY A SPECIFIC LEGAL OBLIGATION TO OFFER EACH UNE, INCLUDING UNE-P AND UNE LOOP-TRANSPORT COMBINATIONS, TO COMPETITORS.**

To satisfy Section 271, Verizon must demonstrate that it has a specific legal obligation to provide each and every UNE to competitors on a nondiscriminatory basis. It is not enough that Verizon offer UNEs on a voluntary basis, but a specific legal obligation must exist to make



available individual UNEs and combinations thereof to requesting CLECs. In this case, Verizon cannot make such a showing, as there is no applicable wholesale tariff approved by the Maine Commission and no Statement of Generally Accepted Terms ("SGAT") in which Verizon binds itself to make available UNEs to all parties requesting UNEs and combinations thereof.

The Commission has established standards under Section 271 for determining compliance with the Act's statutory provisions. A key requirement is that a "BOC must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist items in quantities that competitors may reasonably demand and at an acceptable level of quality. In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis."<sup>2</sup> See 47 U.S.C. § 271(c)(2)(B)(i), (ii).

Moreover, the Commission has specifically and repeatedly held that to satisfy the requirements of Section 271 "[a] BOC must provision competing carriers' orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers."<sup>3</sup> This statutory obligation of BOCs to provide nondiscriminatory access to UNEs means, among other things, that "incumbent LECs are required to perform the functions necessary to combine those elements that are ordinarily combined within their network, in the manner in which they are typically combined."<sup>4</sup> Under these standards, Verizon must

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<sup>2</sup> *Pennsylvania 271 Order*, Appendix C ("Statutory Requirements"), ¶ 5; *Massachusetts 271 Order* ¶ 11; *Connecticut 271 Order*, Appendix D, ¶ 5; *KS/OK 271 Order* ¶ 28.

<sup>3</sup> *Pennsylvania 271 Order*, Appendix C, ¶ 37; *Connecticut 271 Order*, Appendix D, ¶ 38.

<sup>4</sup> *Local Competition Order* ¶ 296.

demonstrate that it has a legal obligation to offer all UNEs, and in particular UNE-P and loop-transport combinations, in any and all customer situations, for the types of loops and switch ports that Verizon ordinarily combines for its own retail customers.

Verizon cannot meet this standard in Maine. As of this date, Verizon has no legal obligation in Maine to provide UNEs or interconnection arrangements to any CLEC, unless the CLEC has already negotiated an interconnection agreement. Verizon has not filed a SGAT in Maine. Nor is there a wholesale tariff under which Verizon is legally bound to make available UNEs and interconnection arrangements to CLECs. Moreover, Verizon has never sought, and the Maine Commission has never imposed, a legal obligation on Verizon to offer all UNEs or to offer interconnection arrangements in accordance with specified terms and conditions that have been reviewed for compliance with the nondiscrimination and other requirements of the Act. The Maine Commission has established UNE rates in Docket 97-505 for each UNE, but there is no order requiring Verizon to offer all UNEs, including UNE-P and loop-transport combinations. Instead, Verizon has voluntarily provided UNEs in the past and states in its application that it is making UNEs available. Verizon Br. at 20. Such voluntary commitments, however, cannot serve as a substitute for the imposition of a legal obligation on Verizon to make available all UNEs and interconnection on a nondiscriminatory basis. If Verizon is not subject to a clear legal obligation to provide UNEs, including UNE-P and UNE loop-transport combinations, then disputes could arise in the future about the interpretation of its voluntary offerings and Verizon's obligations with respect thereto. Verizon could also unilaterally make changes to these offerings. In either case, the only recourse available to a CLEC would be the filing of an administrative complaint with the Maine Commission or this Commission, which is a time consuming and commercially unattractive option. The existence of a clear legal obligation to

offer all forms of UNEs can help avoid or shortcut disputes by making clear Verizon's obligations.

As Verizon cannot demonstrate that it is under an obligation to provide any and all UNEs, Verizon does not satisfy the requirements of Section 271.

## **II. VERIZON FAILS TO SATISFY CHECKLIST ITEM TWO BECAUSE ITS RECURRING SWITCHING AND DUF RATES VIOLATE TELRIC PRINCIPLES.**

Even though some of the more egregious TELRIC violations in Maine UNE rates have been addressed by the Maine Commission in its recent UNE rate order, a number of important pricing obstacles remain that preclude a finding that Verizon has satisfied competitive checklist item two. Consequently, Verizon is still protected from meaningful competitive entry in Maine as a result of inflated UNE rates that increase CLEC costs and deter competitive entry. Specifically, Verizon's newly adopted switching rates are based on cost studies that contain a clear TELRIC error that unlawfully inflates the switching usage component of Verizon's switching rates. In addition, Verizon's DUF rates likewise are significantly overstated by clear TELRIC violations.

### **A. Verizon's Switching Usage Rates Are Inflated By a Clear TELRIC Error.**

As demonstrated in the Declaration of Catherine Pitts, Verizon-Maine's unbundled switching rates fail to comply with TELRIC and cost causation principles because the methodology used by the Maine Commission to allocate switch costs between the minute-of-use rate element and the fixed port rate element causes inflated minute-of-use rates. This inflated minute-of-use rate produces a mismatch between Verizon's costs and the costs of CLEC providers of UNE-P service, and that difference increases with increases in usage. Specifically,

Verizon's Maine rates currently reflect a ratio of fixed to usage sensitive costs of 30%/70%, while the appropriate ratio based on cost causation principles is 59%/41%. This severe mismatch deters CLEC entrants from serving high-use customers and allows over-recovery of costs by Verizon.<sup>5</sup>

Switch rate design has traditionally allocated a portion of switch costs to the fixed line port element and a portion to rates based on minutes of use. Pitts Decl. ¶ 5. In accordance with TELRIC and the Commission's *Local Competition Order*, rates for unbundled network elements are to be established on a "cost causative basis" and "must recover costs in the manner that reflects the way they were incurred."<sup>6</sup> These elementary cost causation principles require that the portion of the switch costs that are non-usage-sensitive should be assigned to the flat-rated or fixed line port charge, and the portion of the switch costs that are usage-sensitive should be allocated to the minute-of-use rate element.<sup>7</sup>

The Maine Commission adopted rates based on the FCC's Synthesis Model including that model's switching investment function with a default 30 percent assignment of switch costs to the fixed line port element and a 70 percent assignment of switch costs to the

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<sup>5</sup> AT&T raised this issue of the fixed nature of most switching costs in its initial brief to the Maine Commission in the UNE proceeding. See Initial Brief of AT&T Telecommunications New England, Inc. Regarding Proposed Recurring and Non-Recurring Charges for Unbundled Network Elements, Operations Support Systems Access, and Collocation, Docket No. 97-505, at 42 (May 4, 2001) ("Verizon has overstated the switch usage charge, set forth on a per minute of use basis, even if it had met its burden of proving that all other aspects of its switch cost study were reasonable. . . . What Verizon should have done is assign [the] fixed getting-started fees to non-traffic sensitive port rate elements, not the traffic sensitive minutes of use element.").

<sup>6</sup> *Local Competition Order* ¶¶ 691, 743.

<sup>7</sup> *Id.* ¶¶ 744-46.

minute-of-use element.<sup>8</sup> The FCC's Synthesis Model, originally developed for Universal Service Fund (USF) cost identification, included the 30%/70% port/usage split and was based on the FCC's narrow definition of port that essentially consisted of a line card and a main distributing frame termination. The FCC estimated these costs to be 30 percent of the total switch investment, leaving the 70 percent residual switch cost to be assigned to the minute-of-use rate element. Pitts Dec. ¶ 6.

In its March 8th Order, the Maine Commission ordered the implementation of switch rates in which "70% of the getting started investment is recovered through the traffic sensitive rate."<sup>9</sup> This 30%/70% split originally established in the USF context and adopted by the Maine Commission is inconsistent with TELRIC principles because it does not accurately reflect switch cost causation. Pitts Decl. ¶¶ 7-13.

In the USF environment, the relative assignment of costs to port and minute of use is not important because specific rates are not being developed, only local usage is included, and the total USF cost is expressed as a cost per line. However, those considerations do not apply in establishing rates for unbundled network elements under TELRIC, where costs must be assigned to the unbundled network rate elements based on cost causation principles to provide

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<sup>8</sup> Investigation of Total Element Long-Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements, Docket No. 97-505 (Maine PUC) (March 8, 2002) ("March 8th Order").

<sup>9</sup> *Id.* at 3.

the proper economic signals to consumers and to ensure that the rates paid by the CLEC are based on the costs incurred by the ILEC.<sup>10</sup> *Id.* ¶ 8.

The majority of the cost of today's generation of digital switches is driven by ports – not by usage – and should be recovered in the fixed port rate element. *Id.* ¶ 9. Switches are basically large computers, and the computing technologies associated with memory and processing power have allowed switch manufacturers to provision the current digital switches with memory and processing power that far exceed expected demands. With the computing power available in modern switches, the primary limiting factor in today's digital switches is not processing capacity but rather the exhaustion of the number of ports. Given this large processing capacity, each additional call processed by a switch does not cause an increase in "getting started" costs. *Id.*

Indeed, much of a switch's total cost is associated with memory, processors, administrative and maintenance equipment and is incurred at the time a switch is placed in operation. These "getting started" costs do not vary with usage and accordingly should be assigned to the fixed port rate element. If a switch does exhaust because the maximum port capacity is reached, then a wire center must incur the cost of a second switch. The exhaustion of the first switch's ports is the primary cause for incurring the "getting started" costs for the second switch, and these costs should also be assigned to the port. *Id.* ¶ 10.

The inclusion of a fixed cost in a usage sensitive element creates an inequitable cost structure for a CLEC offering UNE-P service. Under this structure, the CLEC's switching

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<sup>10</sup> *Local Competition Order* ¶691 ("Costs are causally-related to the network element being provided if the costs are incurred as a direct result of providing the network elements, or can be avoided, in the long run, when the company ceases to provide them.").

costs (and the ILEC revenues from the provision of UNE-Ps) increase with increased usage, while the underlying ILEC costs are largely fixed and therefore increase at a much lower rate.<sup>11</sup> In addition, because the flat rates for residential service act as a cap on the amount that a CLEC can charge for UNE-P service, the inflated minute-of-use rate element deters CLECs from serving high-use residential customers whose usage levels lead to higher costs for CLECs. High-use customers are a desired portion of the market, but Verizon's inflated minute-of-use rates undercut their attractiveness by inappropriately raising the costs of CLECs using UNE-P service to serve those customers. As a result, this cost structure creates a significant barrier to entry for CLECs seeking to serve residential customers with UNE-P by artificially reducing the attractiveness of the high-end customers due to their higher usage costs and the cap of flat residential rates. *Id.* ¶ 11.

In this regard, it is ironic that these high-use customers are the same customers that Verizon has claimed in various venues that CLECs can and should profitably serve on a targeted basis. Verizon's suggestion that CLECs should target the very customers against which Verizon's switching usage rates protect from competitive entry confirms both the seriousness of the TELRIC violation here and the impropriety of looking at benchmarks of total non-loop costs where, as here, there have been clear gross misallocations of fixed costs to usage rates.

An additional problem is that the inflated minute-of-use rate allows Verizon to over-recover its costs. As usage increases, Verizon receives additional revenues even though it has not incurred corresponding costs associated with that usage. The significant growth in usage

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<sup>11</sup> Aside from the significant getting started cost, there is a small portion of the switch that is peak-period usage sensitive and will increase roughly with usage. The disparity between the CLEC's costs for unbundled switching and the ILEC's costs is the result of the inclusion of the large proportion of fixed and "getting started" costs in the minute-of-use rate.

over the past several years has added to this over-recovery of costs. Moreover, as rates remain in effect for a number of years between ratemaking proceedings, increases in usage during the interim increase Verizon's over-recovery and progressively increase CLEC costs above TELRIC levels. *Id.* ¶ 12.

The appropriate allocation of switch costs between fixed and minute-of-use rate elements was specifically addressed by the New York Public Service Commission in the January 2002 New York UNE Decision. In the New York proceeding, Verizon argued for a ratio of 36% fixed costs to 64% usage sensitive costs, claiming that its proposal was based on cost causation and consistent with its general practices. The New York Commission rejected Verizon's arguments and ruled that only 34% of switch costs were usage sensitive and that the remaining 66% should be treated as fixed.<sup>12</sup> Pitts Dec. ¶ 14. Similarly, the Illinois Commission recognized the largely fixed nature of switching costs when it established a 100% flat-rated switch rate.<sup>13</sup>

An analysis of Verizon's Maine-specific switch cost data indicate that 41 percent of the switch costs is usage sensitive.<sup>14</sup> Assigning 41 percent of the switch costs to the minute-of-use rate element would roughly result in the minute-of-use rate being reduced by half. Pitts Dec. ¶ 15.

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<sup>12</sup> Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Case No. 98-C-1357, Order on Unbundled Network Element Rates, (NYPSC), January 28, 2002, at 34-36.

<sup>13</sup> Investigation into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport, Termination of Traffic, Docket No. 96-0486 & 96-0569 (con.), 1998 Ill. PUC LEXIS 109 (Ill. Commerce Commission) (Feb. 17, 1998).

<sup>14</sup> Verizon-Maine's cost study workpapers identify switch investment by category; *e.g.*, getting started, line port, trunks, line-related usage sensitive, SS7, etc. The 41 percent was calculated by adding only those costs that are driven by usage, namely, Line CCS costs, host-remote umbilical costs, trunk costs and SS7 (end office only) costs, and then dividing by the total switch cost.



Predictably, Verizon claims that this serious TELRIC error can be brushed aside because the total non-loop rates (the sum of switching usage, switch port, transport, and signaling) in Maine are lower than those in other states. *See* Verizon Br. at 53; Dinan/Garzillo/Anglin Decl. ¶¶ 54-56. To be sure, the Commission has, in the past, relied on state-to-state comparisons of total non-loop rates in recognition of the fact that there may be legitimate differences in the ways states allocate such costs among usage, port and other switching-related charges. But that does not mean that clear TELRIC violations or a gross misallocation of costs that substantially inflate a particular switching-related element can be ignored entirely in all circumstances. On the contrary, even where benchmarking analyses show no substantial differences in the total non-loop rates of comparable states, clear TELRIC errors in the allocation of costs among non-loop elements can have a substantial deleterious effect on competitive entry, especially where, as here, a static comparison of gross benchmark rates masks the ever increasing harm to CLEC entry when an ILEC misallocates costs to usage sensitive rates. Benchmarking total non-loop rates is appropriate only where the allocation among elements can be said to fall within a reasonable range of such allocations.

The Commission itself has recognized the serious competitive harms caused by overstating usage sensitive rates. *See Local Competition Order* ¶ 74 (noting that usage sensitive rates should not include non-usage sensitive costs in order to ensure that local entrants “have the right incentives to construct and use public network facilities efficiently, and [to] prevent incumbent LECs from inefficiently raising costs in order to deter entry”). That is why the Act does not allow BOCs to offset rate elements that are priced above costs with lower rates for other elements. Instead, the Act requires BOCs to provide cost-based rates for each rate element. *See* 47 U.S.C § 252(d)(1) (stating that BOCs satisfy Sections 251 and 252 of the 1996 Act (and

hence Checklist Item 2) only if they are “based on the cost . . . of providing . . . *the* network element”)(emphasis added). Indeed, the whole purpose of unbundling is to allow an entrant to purchase – at cost-based rates – only the elements necessary to implement its particular entry strategy. If a BOC were free to evade the requirement to offer each element that qualifies for unbundling at cost-based rates by offering some elements at low rates and others at inflated rates, as explained above, the BOC would have the ability to tailor its rates to impede the entry strategies that posed the greatest risk to its local monopolies.

**B. Verizon’s DUF Rates Are Inflated by Clear TELRIC Errors.**

The DUF charge is a fee that Verizon charges CLECs for information regarding CLECs’ usage. CLECs use that information to verify the accuracy of Verizon’s bills and as a basis for billing their own customers. Verizon currently charges \$0.004214 per record pursuant to the terms of its Model Agreement<sup>15</sup> and its existing CLEC interconnection agreements.<sup>16</sup> As established in the attached Declaration of Michael Lieberman, this DUF rate violates TELRIC because it is based on region-wide costs, and the Maine DUF rate is *four times* higher than the DUF rate approved by the New York Public Service Commission.<sup>17</sup> Lieberman Dec. ¶¶ 3-8.

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<sup>15</sup> Agreement by and between CLEC and Verizon New England Inc. D/B/A Verizon Maine, F/K/A New England Telephone and Telegraph Company, D/B/A Bell Atlantic-Maine, for the State of Maine, at 155 (Appendix A to the Pricing Attachment), attached to the Verizon Application at App. H, Att. 1 (the “Model Agreement”).

<sup>16</sup> See Interconnection Agreements attached to the Verizon Application at App. H, Att. 2-4.

<sup>17</sup> In its exceptions to the recommended decision in the Maine UNE rate proceeding, AT&T included the DUF rate as part of its analysis showing the price squeeze problem created in part by Verizon’s DUF rates. See AT&T’s Initial Brief on Exceptions to the January 18, 2002 Recommended Decision, Docket No. 97-505 (filed Jan. 29, 2002). The DUF rate was included as part of Exhibit 1 to the Initial Brief. This analysis was also presented to the Maine Commission in its Section 271 proceeding. See Comments of AT&T Communications of New England, Inc., Inquiry Regarding the Entry of Verizon Maine Into the InterLATA (Long

In its Maine application, Verizon claims that the DUF rate is zero because the Maine Commission did not adopt a DUF rate in its February 12 Order. Verizon Br. at 46 n.45; Dinan/Garzillo/Anglin Decl at ¶ 41. Those statements fail to recognize that Verizon's Model Agreement for CLEC interconnection in Maine specifies the inflated DUF rate, and that DUF rate also appears in existing CLEC interconnection agreements. Lieberman Dec. ¶ 4; Verizon App. H, Att. 1-4. Indeed, on March 7, 2002, over three weeks after the February 12, 2002 effective date of Maine's UNE rates pursuant to the Maine Commission's order, Verizon issued a notice to CLECs in Maine and other former BellAtlantic-North jurisdictions stating that UNE access records had been omitted from prior DUF bills and that these records would be billed on a going forward basis and backbilled for the January-March period in June. Lieberman Dec. ¶ 4 & Att. 1. Also, Verizon has apparently taken no steps to modify its interconnection agreements to reflect the zero rate. *Id.*<sup>18</sup>

There is no question that Verizon's \$.004214 DUF rate fails to comply with TELRIC principles. In a recent filing with the FCC, Verizon conceded that its DUF rates are established using "regionwide data . . . from throughout the former Bell Atlantic North (previously 'NYNEX') region" and are based on data from 1996. *Application of Verizon New England for Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket 02-7, Verizon Ex Parte Letter to W. Caton from R. Ellis, dated March 18, 2002, at 5 ("Verizon March 18 Ex Parte"). Lieberman Dec. ¶ 6.

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Distance) Telephone Market Pursuant to Section 271 of the Telecommunications Act of 1996, Docket No. 2000-849, at 4 et. seq. & Exh. 2 (filed Feb. 15, 2002).

<sup>18</sup> Verizon also states that its alleged zero DUF rate is temporary and will apply only until such time as the Maine Commission acts. Verizon Br. at 46 n.45. In this situation, there is nothing to stop Verizon from proposing another DUF rate at any time in the future, and there is no legally

In the same filing, Verizon also acknowledged that DUF rates are declining, which is to be expected in a declining cost industry such as telecommunications. According to Verizon, DUF rates “reflect the costs of the computer hardware and software required to create the usage information by carrier, and then transmit it to the carrier.” Verizon March 18 Ex Parte at 5. It is beyond dispute that computer hardware and software costs have declined since 1997. Also, as these underlying costs of DUF are heavily non-traffic sensitive, over time, with increasing volumes it would be expected that DUF rates would decline. Lieberman Dec. ¶ 7. Consistent with this fact is Verizon’s statement that DUF rates proposed in New York were lower than in the past because “the estimate of the amount of time required to process a CLEC’s request for usage information is now shorter, resulting in lower costs.” Verizon March 18 Ex Parte at 5

As Verizon’s DUF costs are regional in nature, there should be little variation in the relative DUF rates among states. Yet, Verizon’s Maine DUF rates are *four times* higher than the \$.001001 DUF rate established by the New York Public Service Commission on January 28, 2002, and therefore violate TELRIC principles. *See Verizon New York Compliance Filing Rates*, Section 5. On average, the monthly charge for DUF in Maine is \$1.11, compared to only \$.26 in New York, based on 2000 Maine ARMIS calling volumes. Lieberman Dec. ¶ 8. The impact on CLECs is substantial. Indeed, the difference between the Verizon Maine per line monthly DUF charge and the New York per line monthly DUF charge is approximately \$0.85 per line per month, a significant increase, to a Maine CLEC’s costs of serving a customer

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binding DUF rate in place other than the contractual \$.004214 rate in the interconnection agreements. Lieberman Dec. ¶ 5.

compared to a New York CLEC even though the underlying DUF costs are substantially the same. *Id.*

Thus, Verizon's Maine DUF rates are substantially inflated by clear TELRIC errors. These rates must be adjusted to comply with TELRIC principles before Verizon can be found to satisfy Checklist item 2.

### III. PUBLIC INTEREST

The record in the proceeding shows that there is a final, independent reason why the Commission should deny Verizon's application. Even if the Commission could rationally find that Verizon had fully implemented its obligations under the competitive checklist, including its duty to set cost-based rates within the range that a reasonable application of TELRIC would produce, the record here precludes any finding that granting Verizon's application is "consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3(C)).

The reason is straightforward. At the heart of the public interest inquiry, as Congress conceived it and as this Commission has explained, is a determination of whether, notwithstanding checklist compliance, the local market is in fact fully open to competition. Unless the Commission can confidently make such a determination, any grant of interLATA authorization is not only premature but wholly at odds with the fundamental premise of the Act.

The public interest inquiry includes an examination of the actual state of local competition. Here the record shows that residential competition is virtually non-existent. In particular, only 257 residential lines (and 8873 business lines) in Verizon's Maine service territory are served by facilities-based competitors. There are no UNE-P residential customers,

and only 2700 business lines are served by UNE-P. Torre Dec., Att. 1, at 3. Moreover, the absence of virtually any facilities or UNE-based residential competition is *not* the result of neutral business considerations uniquely within the control of new entrants, *Michigan 271 Order* ¶¶ 385-391, but is due to Verizon's inflated, non-TELRIC compliant rates and its anticompetitive resistance to opening local exchange markets in Maine to competition. *See* p. 1-2 *supra*. Accordingly, approval of this Application is not in the public interest at this time.

### CONCLUSION

For the reasons stated above, AT&T respectfully submits that Verizon's Section 271 application for Maine should be denied.

Respectfully submitted,

David W. Carpenter	<u>/s/ Mark C. Rosenblum</u>
David L. Lawson	Mark C. Rosenblum
Alan C. Geolot	Lawrence Lafaro
Richard E. Young	James Talbot
Christopher T. Shenk	AT&T CORP.
SIDLEY AUSTIN BROWN & WOOD, L.L.P.	295 Basking Ridge, NJ
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*Attorneys for AT&T Corp*

April 10, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of April, 2002, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: April 10, 2002  
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

## SERVICE LIST

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<sup>1</sup> Filed electronically



TAB A

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Application by Verizon New England	)	
Inc., Bell Atlantic Communications,	)	
Inc. (d/b/a Verizon Long Distance),	)	CC Docket No. 02- 61
NYNEX Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions),	)	
Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in Maine	)	
	)	

**DECLARATION OF CATHERINE E. PITTS**  
**ON BEHALF OF AT&T CORP.**

**I. QUALIFICATIONS**

1. My name is Catherine E. Pitts (formerly Petzinger). I am a consultant to AT&T on switch cost modeling issues. My business address is 810 Long Drive Road, Summerville, South Carolina.
2. I have an MBA from Rutgers University, New Jersey, and eighteen years of experience in the telecommunications industry. Before becoming an independent consultant earlier this year, I was employed for five years by AT&T Corporation as a District Manager in Regulatory and Legislative Affairs. Prior to joining AT&T, I was employed by Bellcore (now Telcordia Technologies) for 13 years. While at Telcordia, I was one of three individuals who designed and implemented new incremental costing methodology into the Switching Cost Information System/Intelligent Network (SCIS/IN) model. The SCIS/IN model is used to identify the costs associated

with switching “features” (e.g., call waiting, call forward, and caller ID) and belongs to the family of SCIS models used to determine the costs associated with switching in general. I was Telcordia’s lead subject matter expert on feature costing, as well as a subject matter expert on the 1ESS, 1A ESS and 5ESS switches. When I was promoted to lead the SCIS group of approximately 20 people, I was responsible for the technical development, production, documentation, and customer care for the Switching Cost Information System/Model Office (SCIS/MO) and SCIS/TN models.

3. My experience also includes extensive consultation in the use of cost models in various cost studies in the United States and abroad. I have presented expert testimony regarding switching investments and costs in numerous unbundled network element (“UNE”) and Universal Service Fund (“USF”) proceedings. Most significant for purposes of this proceeding, I have participated in Verizon cost proceedings in New York, Virginia, Maryland, Pennsylvania, Massachusetts, New Hampshire and Rhode Island.

## **II. SUMMARY AND PURPOSE OF TESTIMONY**

4. My testimony discusses the failure of Verizon’s Maine unbundled switching rates to comply with TELRIC and cost causation principles because the methodology used by the Maine Commission to allocate switch costs between the minute-of-use rate element and the fixed port rate element causes inflated minute-of-use rates. This inflated minute-of-use rate produces a mismatch between Verizon’s costs and the costs of CLEC providers of UNE-P service, and that difference increases with increases in usage. Specifically, Verizon’s Maine rates currently reflect a ratio of fixed to usage sensitive costs of 30%/70%, while the appropriate ratio based on cost causation

principles is 59%/41%. This severe mismatch deters CLEC entrants from serving high-use customers and allows over-recovery of costs by Verizon.

**III. THE SWITCH RATES IN MAINE VIOLATE TELRIC BY SEVERELY INFLATING THE MINUTE-OF-USE RATE.**

5. Switch rate design has traditionally allocated a portion of switch costs to the fixed line port element and a portion to rates based on minutes of use. In accordance with TELRIC and the Commission's *Local Competition Order*, rates for unbundled network elements are to be established on a "cost causative basis" and "must recover costs in the manner that reflects the way they were incurred."<sup>1</sup> These elementary cost causation principles require that the portion of the switch costs that are non-usage-sensitive should be assigned to the flat-rated or fixed line port charge, and the portion of the switch costs that are usage-sensitive should be allocated to the minute-of-use rate element.<sup>2</sup>

6. The Maine Commission adopted rates based on the FCC's Synthesis Model including that model's switching investment function with a default 30 percent assignment of switch costs to the fixed line port element and a 70 percent assignment of switch costs to the minute-of-use element.<sup>3</sup> The FCC's Synthesis Model, originally developed for Universal Service Fund (USF) cost identification, included the 30%/70% port/usage split and was based on the FCC's narrow definition of port that essentially consisted of a line card and a main distributing frame termination. The FCC

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<sup>1</sup> *Local Competition Order* ¶¶ 691, 743.

<sup>2</sup> *Id.* ¶¶ 744-46.

<sup>3</sup> Investigation of Total Element Long-Run Incremental Cost (TELRIC) Studies and Pricing of Unbundled Network Elements, Docket No. 97-505 (Maine PUC) (March 8, 2002) ("March 8th Order").

estimated these costs to be 30 percent of the total switch investment, leaving the 70 percent residual switch cost to be assigned to the minute-of-use rate element.

7. In its March 8th order, the Maine Commission ordered the implementation of switch rates in which “70% of the getting started investment is recovered through the traffic sensitive rate.”<sup>4</sup> The 30%/70% split originally established in the USF context and adopted by the Maine Commission is inconsistent with TELRIC principles because it does not accurately reflect switch cost causation.

8. In the USF environment, the relative assignment of costs to port and minute of use is not important because specific rates are not being developed, only local usage is included, and the total USF cost is expressed as a cost per line. However, those considerations do not apply in establishing rates for unbundled network elements under TELRIC, where costs must be assigned to the unbundled network rate elements based on cost causation principles to provide the proper economic signals to consumers and to ensure that the rates paid by the CLEC are based on the costs incurred by the ILEC.<sup>5</sup>

9. The majority of the cost of today’s generation of digital switches is driven by ports—not by usage – and should be recovered in the fixed port rate element. Switches are basically large computers, and the computing technologies associated with memory and processing power have allowed switch manufacturers to provision the current digital switches with memory and processing power that far exceed expected

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<sup>4</sup> March 8th Order at 3.

<sup>5</sup> *Local Competition Order* ¶691 (“Costs are causally-related to the network element being provided if the costs are incurred as a direct result of providing the network elements, or can be avoided, in the long run, when the company ceases to provide them.”).

demands. With the computing power available in modern switches, the primary limiting factor in today's digital switches is not processing capacity but rather the exhaustion of the number of ports. Given this large processing capacity, each additional call processed by the switch does not cause an increase in "getting started" costs.

10. Indeed, much of the total cost of a switch is associated with memory, processors, administrative and maintenance equipment and is incurred at the time a switch is placed in operation. These "getting started" costs do not vary with usage and accordingly should be assigned to the fixed port rate element. If a switch does exhaust because the maximum port capacity is reached, then a wire center must incur the cost of a second switch. The exhaustion of the first switch's ports is the primary cause for incurring the "getting started" costs for the second switch, and these costs should also be assigned to the port.

11. The inclusion of a fixed cost in a usage sensitive element creates an inequitable cost structure for a CLEC offering UNE-P service. Under this structure, the CLEC's switching costs (and the ILEC revenues from the provision of UNE-Ps) increase with increased usage, while the underlying ILEC costs are largely fixed and therefore increase at a much lower rate.<sup>6</sup> In addition, because the flat rates for residential service act as a cap on the amount that a CLEC can charge for the UNE-P service, the inflated minute-of-use rate element deters CLECs from serving high-use residential customers whose usage levels lead to higher costs for CLECs. High-use customers are a

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<sup>6</sup> Aside from the significant getting started cost, there is a small portion of the switch that is peak-period usage sensitive and will increase roughly with usage. The disparity between the CLEC's costs for unbundled switching and the ILEC's costs is the result of the inclusion of the large proportion of fixed and "getting started" costs in the minute-of-use rate.

desired portion of the market, but Verizon's inflated minute-of-use rates undercut their attractiveness by inappropriately raising the costs of CLECs using UNE-P service to serve those customers. As a result, this cost structure creates a significant barrier to entry for CLECs seeking to serve residential customers with UNE-P by artificially reducing the attractiveness of the high-end customers due to their higher usage costs and the cap of flat residential rates.

12. An additional problem is that the inflated minute-of-use rate allows Verizon to over-recover its costs. As usage increases, Verizon receives additional revenues even though it has not incurred corresponding costs associated with that usage. The significant growth in usage over the past several years has added to this over-recovery of costs. Moreover, as rates remain in effect for a number of years between ratemaking proceedings, increases in usage during the interim increase Verizon's over-recovery and progressively increase CLEC costs above TELRIC levels.

13. For all of the foregoing reasons, it is preferable to recover fixed costs from the least volatile rate element. In switching, the least volatile rate element is the port.

14. The appropriate allocation of switch costs between fixed and minute-of-use rate elements was specifically addressed by the New York Public Service Commission in the January 2002 New York UNE Decision. In the New York proceeding, Verizon argued for a ratio of 36% fixed costs/64% usage sensitive costs, claiming that its proposal was based on cost causation and consistent with its general practices. The Commission rejected Verizon's arguments and ruled that only 34% of

switch costs were usage sensitive and that the remaining 66% should be treated as fixed.<sup>7</sup>

Similarly, the Illinois Commerce Commission recognized the largely fixed nature of switching costs when it established a 100% flat-rated switch rate.<sup>8</sup>

15. An analysis of Verizon's Maine-specific switch cost data indicate that 41 percent of the switch costs is usage sensitive.<sup>9</sup> Assigning 41 percent of the switch costs to the minute-of-use rate element would roughly result in the minute-of-use rate being reduced by half.

#### IV. CONCLUSION

16. The switching rates in Maine violate TELRIC and cost causation principles. The inflated allocation of switch costs to minute of use pose a significant competitive barrier for CLECs whose market-entry strategy depends on the UNE-P for residential consumers. These CLECs cannot compete with the ILEC for the flat-rated residential consumer that has high levels of local usage because CLECs pay a cost for every minute, while the ILEC does not incur the same cost for the minute of use.

Verizon's Section 271 application cannot be approved until it establishes switching rates based on an appropriate allocation between fixed and minute-of-use rate elements.

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<sup>7</sup> Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements, Case No. 98-C-1357, Order on Unbundled Network Element Rates, (NYPSC), January 28, 2002, at 34-36.

<sup>8</sup> Investigation into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport, Termination of Traffic, Docket No. 96-0486 & 96-0569 (con.), 1998 Ill. PUC LEXIS 109 (Ill. Commerce Commission) (Feb. 17, 1998).

<sup>9</sup> Verizon-Maine's cost study workpapers identify switch investment by category; *e.g.*, getting started, line port, trunks, line-related usage sensitive, SS7, etc. The 41 percent was calculated by adding only those costs that are driven by usage, namely, Line CCS costs, host-remote umbilical costs, trunk costs and SS7 (end office only) costs, and then dividing by the total switch cost.



**VERIFICATION PAGE**

I hereby declare under penalty of perjury that the foregoing is true and accurate to  
the best of my knowledge and belief.

Catherine E. Pitts

April 9, 2002

TAB B

**Before The  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Application by Verizon New England	)	
Inc., Bell Atlantic Communications,	)	
Inc. (d/b/a Verizon Long Distance),	)	CC Docket No. 02-61
NYNEX Long Distance Company	)	
(d/b/a Verizon Enterprise Solutions),	)	
Verizon Global Networks Inc., and	)	
Verizon Select Services Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in Maine	)	
	)	

**DECLARATION OF MICHAEL LIEBERMAN**  
**ON BEHALF OF AT&T CORP.**

**I. BACKGROUND AND SUMMARY**

1. My name is Michael R. Lieberman. I am a District Manager in AT&T's Law and Government Affairs organization. In this position I am responsible for providing financial and industry analysis support relating to the costing and pricing of local telecommunications services. I was AT&T's primary participant in the development of the HAI/Hatfield Model of forward looking economic costs of local exchange networks and services and have been responsible for evaluating other costing models and methodologies such as the BCPM and the FCC's Synthesis Model. I have a Bachelor's degree in mathematics and a Master's degree in statistics from the State University of New York at Stony Brook. Prior to joining AT&T as a statistical consultant in 1978, I was a bio-statistical consultant with Carter-Wallace of Cranbury, New Jersey.

2. My testimony shows that Verizon's daily usage feed ("DUF") rates in Maine are vastly overstated. Verizon develops DUF rates on a regional basis, and its current \$.004214 DUF rate is four times higher than the rate recently approved by the New York Public Service Commission for New York. In a recent FCC filing, Verizon has admitted that this DUF rate is based on 1996 cost data, which is in no way forward looking and ignores the significant reductions in DUF costs since that period. Verizon's claim that its DUF rate is zero is misleading and inconsistent with its Model Agreement, its interconnection agreements, and a recent Verizon billing notice.

## **II. VERIZON'S DUF RATES EXCEED TELRIC LEVELS.**

3. The DUF rate is a fee that Verizon charges CLECs for information regarding CLECs' usage. CLECs use that information to verify the accuracy of Verizon's bills and as a basis for billing their own customers. Verizon currently charges \$0.004214 per record in its Model Agreement pursuant to which it offers to interconnect with CLECs in Maine<sup>1</sup> and in its existing CLEC interconnection agreements.<sup>2</sup>

4. In its application, Verizon claims that the DUF rate is zero because the Maine Commission did not adopt a DUF rate in its February 12 Order. Verizon Br. at 46 n.45; Dinan/Garzillo/Anglin Decl at ¶ 41. This claim fails to recognize that Verizon's Model Agreement and existing CLEC interconnection agreements specify the inflated DUF rate. Moreover, on March 7, 2002, over three weeks after the February 12, 2002 effective date of Maine's UNE rates pursuant to the Maine Commission's order, Verizon issued a notice to

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<sup>1</sup> Agreement by and between CLEC and Verizon New England Inc. D/B/A Verizon Maine, F/K/A New England Telephone and Telegraph Company, D/B/A Bell Atlantic-Maine, for the State of Maine, at 155 (Appendix A to the Pricing Attachment), attached to the Verizon Application at App. H, Att. 1 ("Model Agreement").

<sup>2</sup> See Interconnection Agreements attached to the Verizon Application at App. H, Att. 2-4.

CLECs in Maine and other former BellAtlantic-North jurisdictions stating that UNE access records had been omitted from prior DUF bills and that these records would be billed on a going forward basis and backbilled for the January-March period in June. (This notice is appended hereto as Attachment 1). Also, Verizon has apparently taken no steps to modify its interconnection agreements to reflect the zero rate.

5. Moreover, Verizon notes that its alleged zero DUF rate is temporary and will apply only until such time as the Maine Commission acts. Verizon Br. at 46 n.45. In this situation, there is nothing to stop Verizon from proposing another DUF rate at any time in the future, and there is no legally binding DUF rate other than the contractual \$.004214 rate in the interconnection agreements.

6. There is no question that the \$.004214 DUF rate fails to comply with TELRIC principles. In a recent filing with the FCC, Verizon has conceded that its DUF rates are established using "regionwide data . . . from throughout the former Bell Atlantic North (previously 'NYNEX') region" and are based on data from 1996. *Application of Verizon New England for Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket 02-7, Verizon Ex Parte Letter to W. Caton from R. Ellis, dated March 18, 2002, at 5 (appended hereto as Attachment 2).

7. In the same filing, Verizon also acknowledged that DUF rates are declining, which is to be expected in a declining cost industry such as telecommunications. According to Verizon, DUF rates "reflect the costs of the computer hardware and software required to create the usage information by carrier, and then transmit it to the carrier." *Id.* It is beyond dispute that computer hardware and software costs have declined since 1997. Also, as these underlying costs of DUF are heavily non-traffic sensitive, over time, with increasing

volumes it would be expected that DUF rates would decline. Consistent with this fact is Verizon's statement that DUF rates proposed in New York were lower than in the past because "the estimate of the amount of time required to process a CLEC's request for usage information is now shorter, resulting in lower costs." *Id.*

8. As Verizon's DUF costs are regional in nature, there should be little variation in the relative DUF rates among states. Yet, Verizon's Maine DUF rates are *four times* higher than the \$.001001 DUF rate established by the New York Public Service Commission on January 28, 2002, and therefore violate TELRIC principles. *See Verizon New York Compliance Filing Rates*, Section 5. On average, the monthly charge for DUF in Maine is \$1.11, compared to only \$.26 in New York, based on 2000 Maine ARMIS calling volumes. The impact on CLECs is substantial. Indeed, the difference between the Verizon Maine per line monthly DUF charge and the New York per line monthly DUF charge adds approximately \$0.85 per line per month, a significant increase, to a Maine CLEC's cost of serving a customer compared to a New York CLEC, even though the underlying DUF costs are substantially the same.

### **III. CONCLUSION**

9. Thus, Verizon's Maine DUF rates are substantially inflated by clear TELRIC errors. These rates must be adjusted to comply with TELRIC principles before Verizon can be found to satisfy Checklist item 2.

**VERIFICATION PAGE**

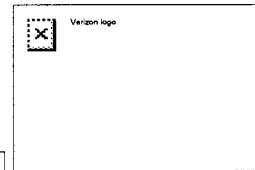
I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.



April 9, 2002

## Attachment 1





March 7, 2002

**Daily Usage Files**

This letter is to inform you that in the states of NY, CT, MA, RI, NH, VT and ME, Verizon has determined that UNE (Unbundled Network Elements) access records from the Daily Usage File (DUF) which you have been receiving have not been included in DUF record counts for which you are billed. Instead only end user billable DUF have been reflected in the DUF record counts. However, all DUF records should be included in such counts and billed. The cause of the error was failure to include record counts from 20-24-09/10 type UNE access packs. This only affects purchasers of UNEs who opt to receive the Daily Usage Files.

UNE access DUF records will be included in the DUF record counts for the March 2002 billing cycle and will be reflected on your April UNE bill. You should see an increase in the number of records billed under the line UNB CHG FOR DAILY USAGE RECORD on the "Y40" UNE bills.

In addition, the January through March 2002 DUF access record counts will be calculated, and backbilling of those charges will be reflected in June bills. You will be given notice if backbilling for earlier periods occur at a later date.

If you have any questions, please contact the Billing and Collections Operations Center or your Verizon account manager.

## Attachment 2



Richard T. Ellis  
Director – Federal Affairs

1300 I Street, NW  
Suite 400 West  
Washington, DC 20005  
(202) 515-2534  
(202) 336-7866 (fax)

March 18, 2002

William Caton  
Acting Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Application by Verizon New England for Authorization To Provide In-Region,  
InterLATA Services in Vermont, CC Docket No. 02-7

Dear Mr. Caton:

This ex parte responds to a number of different questions from staff.

1. As an initial matter, Verizon has demonstrated previously that the UNE rates set by the Vermont Board, and all inputs underlying those rates, are TELRIC-compliant. *See, e.g., Declaration filed by V. Louise McCarren, Patrick A. Garzillo, and Michael J. Anglin ("McCarren/Garzillo/Anglin Declaration") ¶¶ 13-22.* The Vermont Board conducted a thorough and comprehensive examination of UNE rates, which included review of written testimony, *see id.* ¶¶ 14-15, twelve days of technical hearings, *see id.* ¶ 15, and briefing by participating parties, *see id.* ¶ 16. The Board issued a detailed order addressing pricing issues on February 4, 2000, *see App. E, Tab 7*, and Verizon filed revised cost studies and SGAT pages reflecting the Board's Order. *See McCarren/Garzillo/Anglin Declaration ¶¶ 18-20.* The PSC formally approved these rates on August 23, 2000. *See id.* ¶ 21; App. E, Tab 8.

Just as this is true of the rates set by the Board generally, it is equally true of the switching rates set by the Board. In fact, while this Commission has held that it is appropriate to use a mix of new and growth switch discounts in computing TELRIC rates, the Vermont Board set switching rates based on the assumption of all new switches priced at the deeper discount for new switches. *See February 4 Order at 24. (App. E, Tab 7.)* In other words, the assumptions used by the Vermont Board produced lower costs than would be produced by the assumptions this Commission has previously found to be TELRIC-compliant.

2. Despite this fact, some parties have suggested that the switching rates set by the Vermont Board cannot be relied on because they are somehow too old. Their arguments are misplaced.

First, no party has asked the Board to revisit that rate. In fact, the long distance carriers who now complain about the switching rate chose not to ask the Board to reconsider the rate, chose not to appeal the rate, and chose not to ask the Board to initiate a proceeding to revisit the rate. If the long distance carriers believe it is now timely to revisit those rates, they can petition the Vermont Board to do so. They should not be allowed to challenge that rate for the first time in the context of a section 271 application. See, e.g., Public Notice, *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act* (March 23, 2001) at 5 (requesting that parties ensure that “disputes are brought before and addressed by the relevant state commission prior to” commencement of the section 271 process). In contrast, allowing the long distance carriers to dredge up any rate-related issue they like, no matter how small, would be utterly unworkable. It is simply not practicable to conduct the equivalent of a state rate case in the context of a 90-day 271 review. See, e.g., *AT&T Corp. v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000) (noting that “allowing collateral challenges could change the nature of section 271 proceedings from an expedited process focused on an individual applicant’s performance into a wide-ranging, industry-wide examination of telecommunications law and policy”). Consequently, the long distance carriers should not be allowed to raise issues here that have not been presented first to the state commissions – the entities who are charged by the Act with setting specific rates to begin with. See, e.g., 47 U.S.C. § 252(c)(2) (giving state commissions the primary role to “establish . . . rates for interconnection, services, or network elements.”); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999) (state commissions are charged with “assur[ing] compliance with the pricing standards in subsection [252(d)]”).

Second, the Vermont Board unquestionably followed TELRIC principles and set the switching rates based upon the best information that was available to it at the time. Even if the passage of time has resulted in additional information that could be considered in a new proceeding to review those rates, that does not make the existing rates any less TELRIC compliant. As the D.C. Circuit has held, “[i]f new information automatically required rejection of section 271 applications,” such applications “could [never] be approved in this context of rapid regulatory and technological change.” *AT&T*, 220 F.3d at 617-18; see also *Rhode Island Order* ¶ 31; *New York Order* ¶ 247. Instead, if the long distance carriers believe they have information that warrants revisiting the Board-set rates, then the appropriate course is to present that information in a petition to the Vermont Board.

In the meantime, however, there is no question that the Vermont Board adhered to TELRIC principles, and its specific rate determinations are entitled to deference. See, e.g., *Kansas/Oklahoma Order* ¶ 59 (The FCC “will not conduct a *de novo* review of a state’s pricing determinations and will reject an application only if ‘basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.’” (quoting *New York Order* ¶ 244)).

3. AT&T also argues for the first time here that the rates set by the Vermont Board are somehow defective because they assume the use of Lucent 5ESS switches. No party raised this issue during the state TELRIC proceeding. No party raised this issue in an appeal of the TELRIC proceeding. In fact, as noted above, no party appealed *any* part of the Vermont Board's TELRIC proceeding. And no party raised this issue at any time since the Board concluded its TELRIC proceeding, including during the course of the state 271 proceeding. Under these circumstances, this Commission should not even entertain AT&T's arguments on this issue given its utter failure to raise them in the proper forum.

AT&T's criticisms, in any case, are flawed. The Nortel DMS100 digital switch is neither newer, nor better, than the Lucent 5ESS switch. To the contrary, the 5ESS was developed and introduced to the market *after* the DMS100 product, and incorporates a more advanced distributed switching architecture. Moreover, the Lucent 5ESS switches are much better suited for Vermont than Nortel switches due to the rural nature of Vermont. *See Application by Verizon New England For Authorization to Provide In-Region, InterLATA Services in Vermont at 75-77 (Jan. 17, 2002)* (explaining that Vermont is the most rural state in the country). Significantly, Lucent's remote switching capability is far superior than the remote switching capability of the Nortel switch. This capability is critically important to a state like Vermont, which is unusually rural. *See, e.g., Reply Brief and Reply Declaration filed by V. Louise McCarren, Patrick A. Garzillo, and Michael J. Anglin ("McCarren/Garzillo/Anglin Reply Declaration")* ¶ 8 (noting low line density in Vermont).

In rural areas such as Vermont, Verizon typically deploys a "host" switch housed in a large central office that communicates with "remotes" housed in smaller central offices closer to end users' premises. This architecture is efficient because end users tend to be somewhat dispersed. In such circumstances, without the use of a remote, Verizon would either have to employ very long loops to reach customers or many large "host" central offices that served relatively few end users. Use of a remote allows Verizon to establish smaller "remote" centers that can group end users together. Given the benefits of a host/remote architecture in Vermont, the Lucent 5ESS switch is preferable to other switches. Lucent 5ESS remote switches retain almost all the functionality of a host and therefore can provide all of the same services provided by the host switch. The Lucent 5ESS switch, among other things, can trunk calls directly from remotes. The Nortel DMS switch cannot perform such tasks.

For these reasons, Verizon has deployed Lucent 5ESS switches ubiquitously in the Vermont network – as it has in similar areas throughout its footprint, including New Hampshire, West Virginia, and rural sections of New York – and intends to continue to use Lucent 5ESS switches in these areas for the foreseeable future. In fact, even if Verizon built its entire network from scratch today (which contrary to the CLECs' claims is not the appropriate TELRIC standard), it would still choose to deploy Lucent 5ESS switches in Vermont given the rural nature of the state.

Verizon's exclusive use of Lucent switches in the Vermont cost studies therefore reflects the best forward-looking technology and complies with TELRIC principles. *See generally New York Order* ¶ 244 ("[W]hile TELRIC consists of methodological principles for setting prices,

states retain flexibility to consider local technological [and] environmental ... conditions.” (internal quotation marks omitted)).

4. Not only do the Vermont rates reflect the use of the most efficient choice of switches and switching architecture, but, contrary to the claims of some parties, they also reflect the benefits of competitive bidding. The switch discounts in Verizon’s cost studies, which the Vermont Board dramatically increased to reflect all new switch purchases, were taken from the Lucent contract then in effect across the entire NYNEX region. Verizon’s Lucent prices were therefore competitively leveraged by the *total* volume of Verizon business with Lucent throughout this region. And because Lucent knows that it is competing with Nortel and Siemens for Verizon’s business in other states that do install Nortel/Siemens switches, Verizon’s Lucent prices reflect this competitive bidding.

5. In addition, the Commission can take additional comfort that the rates at issue here are well within the range of reasonableness from the fact that the combined loop and non-loop rates set by the Vermont Board are substantially *lower* (relative to cost) than the newly established New York rates that AT&T and others have argued should be the standard. As Verizon has explained earlier in the proceeding, although CLECs sometimes purchase loops alone, CLECs only purchase non-loop elements in combination with loops. *See McCarren/Garzillo/Anglin Reply Declaration* ¶¶ 46-53. Moreover, the Commission previously has explained that it is appropriate to compare the rates for elements that are purchased together on a combined basis. *See, e.g., Massachusetts Order* ¶ 25. Thus, while it is appropriate to benchmark loops alone -- because they are purchased separately -- non-loop rates can properly be analyzed in combination with loop rates -- because they are purchased in combination. *See, e.g., id.* ¶¶ 46-53; *Massachusetts Order* ¶ 25 (explaining rationale for benchmarking various non-loop elements together). And as Verizon has demonstrated, its Vermont loop and non-loop rates combined not only satisfy the benchmark test against the “new” New York rates, but are in fact about 35% lower than the maximum combined rate that would be permitted by such analysis. *See McCarren/Garzillo/Anglin Reply Declaration* ¶¶ 50-52.

6. Installation Factor – With respect to the vintage of data used to calculate engineering, furnished and installed (“EF&I”) factors, the cost studies submitted in the state proceedings used 1995 data from its Detailed Continuing Property Record (“DCPR”) database to develop these factors. The Vermont Board found that there was *no* “plausible evidence” presented during the TELRIC proceeding “to suggest that the [data on which Verizon’s EF&I factor was based] are not representative of expected future costs.” *February 4 Order* at 28. (App. E, Tab 7.)

No party has since asked the Vermont Board to reconsider or reopen its decision on this issue. Nor, as noted above, does the fact that there might be additional information available today make the existing rates any less TELRIC compliant. On the contrary, while some inputs used to determine a particular rate may go down over time, others will go up. Again, moreover, the D.C. Circuit recognized that “[i]f new information automatically required rejection of section 271 applications,” such applications “could [never] be approved in this context of rapid regulatory and technological change.” *AT&T*, 220 F.3d at 617-18. For all the reasons outlined above, therefore, if the long distance carriers believe that there is a reason to revisit this or other

inputs used by the Vermont Board to set the switching rates, then they should include it in a petition to the Vermont Board. They should not be permitted to raise it for the first time in the context of a section 271 proceeding.

7. DUF Rates – Likewise, no party has challenged the rates set by the Vermont Board for the daily usage feed, or DUF, nor have they asked the Board to set new DUF rates. This is true even though the CLECs knew well before the Vermont 271 proceeding that Verizon had proposed lower DUF rates in the New York UNE cost proceeding. Again, as explained above, a CLEC should be not able to raise pricing issues during a 271 proceeding that it did not first raise before the state commission.

Moreover, the rates set by the Vermont Board reflected the best information that was available at the time it conducted its TELRIC proceeding and that decision is entitled to substantial deference. Verizon developed its Vermont DUF rates using data gathered in 1996. These rates reflect the costs of the computer hardware and software required to create the usage information by carrier, and then transmit it to the carrier. To develop these costs, Verizon first identified the steps required to create and transmit usage information, and then used actual measurements and made other assumptions regarding the amount of computer processing needed to perform these steps.

The DUF rates Verizon recently proposed in New York and Massachusetts were developed using essentially the same methodology; however, the estimate of the amount of time required to process a CLEC's request for usage information is now shorter, resulting in lower costs. This merely reflects the fact that additional information is now available based on experience since the rates were initially set. But, as Verizon explained in its Reply Brief, the fact that Verizon's DUF rates are based on data from 1996 is irrelevant to whether the rates are TELRIC-compliant. Reply Brief at 23-24. Nor does the fact that additional information would be available if the Vermont Board reviewed the rates require rejection based on the existing rates. *AT&T*, 220 F.3d at 617-18; *see also Rhode Island Order* ¶ 31; *New York Order* ¶ 247. If CLECs believe that the Vermont rates should now be modified, they should raise that with the Vermont Board. A section 271 application is not the appropriate context for a CLEC to raise for the first time a claim that a rate should be lower.

Moreover, the DUF rates may not be viewed in isolation. The cost of providing other UNEs and services has *increased* – a fact the CLECs conveniently ignore. Thus, it would be inappropriate to require Verizon to lower the DUF rates because costs have decreased, yet keep in place rates for other UNEs and services whose costs have increased. Finally, the DUF rate that the Commission just approved in the *Rhode Island Order* is almost identical to the rate in Vermont. *See McCarren/Garzillo/Anglin Reply Declaration* ¶ 29.

The staff also asked whether the new DUF rates proposed in New York were developed using regionwide data. These rates reflect data from throughout the former Bell Atlantic North (previously "NYNEX") region. The Bell Atlantic South states use a different methodology to develop DUF rates because customer usage information is processed differently in the former Bell Atlantic North and Bell Atlantic South jurisdictions.

8. Busy Hour Assumptions – The following data was used in Verizon's switching cost studies: The total busy hour minutes of use figure in Vermont is 2,518,111. This figure can be found at Column C, line 2 of the "Fixed Loc. Usage STATEWIDE" and "Variable Local STATEWIDE" tabs of the spreadsheet appended hereto as Attachment 1. The total busy day minutes of use -- derived through Verizon's actual observation of a busy hour in a busy day in a busy month, *see McCarren/Garzillo/Anglin Reply Declaration* ¶ 32 -- is 25,181,110. This figure is computed by dividing the total busy hour minutes by the busy-hour-to-day ratio, which, as shown on tab "George EO ANN," Column C, line 1 of Attachment 2, equals 0.10. Finally, the cost per busy-hour minute of use is \$0.004003. This number is derived by taking the sum of "Total TELRIC Cost per MOU" (\$0.003374), "Total Common Cost per MOU" (\$0.000116), and "Total Directly Attributable Joint Cost per MOU" (\$0.000768) from lines 3, 6, and 9 of the "Total Loc. Sw. Usage STATEWIDE" tab in Attachment 2, and multiplying the total (\$0.004258) by 0.94 to reflect a Board-ordered 6% reduction.

Verizon has previously explained why its busy hour assumptions are TELRIC-compliant. Reply Brief at 23; *McCarren/Garzillo/Anglin Reply Declaration* ¶¶ 30-34. Verizon calculates total minutes of use in the busy hour, and then extrapolates from the busy hour to determine the total annual minutes of use over which it must spread its switch investment costs. Because Verizon's starting point is not an *average* hour but rather a *busy* hour in a *busy* day in a *busy* month, *see id.*, it would be inappropriate to multiply that busy hour usage over *all* days in a year, as that approach would substantially overstate annual usage and, in turn, understate the per-minute cost of switching. Use of 251 days, rather than 365, balances the use of the *busy* hour and results in a more accurate estimate of annual usage. *See id.*

The twenty-page limit does not apply as set forth in DA 02-111. Please let me know if you have any questions.

Sincerely,



cc: J. Veach  
J. Stanley  
G. Remondino